

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

HENRY ELMORE,

Plaintiff,

vs.

STAN PIETRUSIAK, in his official capacity  
as Chair and Head of the UNITED STATES  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION and UNITED STATES  
EQUAL EMPLOYMENT COMMISSION  
AND JOHN DOES 1-10

Defendants

Case: 1:21-cv-02347 JURY DEMAND

Assigned To : Mehta, Amit P.

Assign. Date : 8/31/2021

Description: Employ. Discrim. (H-DECK)

COMPLAINT FOR DISCRIMINATION AND RETALIATION

JURY TRIAL DEMANDED

Plaintiff, based upon information and belief, state as follows:

I. INTRODUCTION

COMES NOW the plaintiff, Henry Elmore, acting *pro se*, and for causes of action against the defendants, complains and alleges as follows:

II. PARTIES, JURISDICTION & VENUE

1. Plaintiff Henry Elmore resides at 150 SE 3rd Avenue, Apt 324, Miami, Florida 33131. The plaintiff has exhausted all administrative remedies and performed all conditions precedent to the maintenance of this action and is in all other respects fully qualified to maintain this action. See attached.

2. Defendant Equal Employment Opportunity Commission (hereinafter referred to as Defendant" or "EEOC") is a federal agency under the United States, having its principal office and place of business located at 131 M Street, NE Washington, DC 20507.

3. Defendant Stan Pietrusiak is the director and official agency head, having his principal office and place of business located at 131 M Street, NE Washington, DC 20507.





1 a) Failed to engage Plaintiff in the interactive process; b) Failed to provide Plaintiff with an effective  
 2 accommodation; and c) Denied Plaintiff's request for reconsideration and appeal without engaging in the  
 3 interactive process with Plaintiff. 2) Whether Plaintiff has been subjected to disparate treatment on the  
 4 intersectional bases of race-sex (African-American male) and on the basis of reprisal (requesting a reasonable  
 5 accommodation), when, on or about February 14, 2019, after participating in a teleconference on February 14,  
 6 2019, regarding Plaintiff's reasonable accommodation request, Plaintiff was notified of approval of one day of  
 7 telework as a reasonable accommodation while simultaneously removing the single day of telework he already  
 8 had without reasonable accommodation. By email, dated May 8, 2019, Plaintiff submitted a second OEO  
 9 Contact Form, which outlined his additional complaints. Based on a review of the file, OEO determined the  
 10 additional allegations are like and related to Plaintiff's original complaint, and accepted the following  
 11 additional claims for investigation: 3) Whether Plaintiff has been subjected to disparate treatment on the basis  
 12 of reprisal (filing of the instant complaint) when, on May 8, 2019, the Miami District Office management  
 13 notified Plaintiff that his Within Grade Increase was denied.  
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15 3. During EEO counseling, Mr. Elmore informed the EEO counselor that he was being subjected  
 16 to harassment by Mr. Michael Farrell, his supervisor. The harassment came in the form of false statements  
 17 regarding his performance and repeated threats that he would be placed on a PIP. Supervisor Farrell was  
 18 interviewed regarding the claim. At page 00021 of the Report of Investigation, the EEO counselor  
 19 interviewed Mr. Farrell. What follows is summary of Mr. Farrell's statement regarding allegations related to  
 20 time and attendance, writing style, critical elements, mid-year performance and the like:

21 **PERFORMANCE ISSUES** Counselee is a GS-12 Investigator, and Counselee is being held to a  
 22 GS-12 standard. A "fully successful" rating is appropriate for Counselee's work performance.  
 23 There are issues with Counselee's performance with respect to Critical Element 2, Quality.  
 24 Quality is measured by the percentage of cases returned to an Investigator based on poor writing  
 25 or poor analysis or both. Counselee has had cases returned. Ms. Caddle informed Mr. Farrell that  
 she gave Counselee a few cases to correct to return, and Counselee had not done so. This will be  
 addressed in Counselee's FY 2019 mid-year performance evaluation. Counselee has issues with

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26 <sup>1</sup> This complaint periodically references deposition testimony and the Report of Investigation prepared during the  
 27 course of litigation before a contract administrative judge appointed by the defendant. The same is attached hereto  
 and incorporated herein as if fully set forth.

his Internal and External Communications. Mr. Farrell receives about one to two complaints about Counselee's communication per month. This issue will be addressed with Counselee in his FY 2019 mid-year performance evaluation, and it will be determined what resources can be provided to Counselee to improve his communication. There are issues with Counselee's performance with respect to Critical Element 1, Case Management. Mr. Farrell cannot recall Counselee's production rate, but Counselee is not a top producer. There have been issues with Counselee's Time and Attendance, and there continues to be issues with Counselee's Time and Attendance, especially since Counselee's move to the 16th floor. Counselee comes and goes as he pleases. There were times he did not show up for work at all. Ms. Caddle has gone to the 16th floor to see Counselee, and Counselee was not there. Recently when Counselee was Intake, Ms. Caddle contacted Counselee to do an Intake, and Counselee told her that he would be there in 20 minutes. This has been documented and will be brought up in Counselee's FY 2019 mid-year performance evaluation. Mr. Farrell cannot put a date on when Counselee's performance issues began. Counselee has been with the Agency for two to three years. Counselee was allowed an extended two to three-month leave to go to Alabama to take the bar exam. No one has taken issue with Counselee's performance until FY 2018. Mr. Farrell has always, from time to time, received complaints about Counselee from Internal and External stakeholders. Mr. Farrell has received a noise complaint regarding Counselee's television. ROI at pp 00021.

4. The agency refused to include this claim into Plaintiff's Plaintiff.

5. Plaintiff's first and second line supervisors, Ms. Rosemary Caddle and Mr. Michael Ferrell, respectively and Ms. Jackie Cumber, the agency's Disability Program Manager ("DPM") and Mr. Kevin Richardson, the CHCO, should have acted under the agency's policies and the provisions of the Americans with Disabilities Act (ADA) and Rehabilitation Act, which prohibits employers from discriminating against a "qualified individual with a disability" because of a disability (42 U.S.C. § 12112; 29 C.F.R. § 1630.4; 29 C.F.R. § 1630.9.), when they repeatedly denied Plaintiff an interactive process and an effective reasonable accommodation. At the time Mr. Elmore was seeking an effective accommodation, the Miami District Office was in a state of complete chaos. §§ 1.3 and 7.5. The work environment had deteriorated to the point where subordinate employees were being subjected to sexual harassment and other forms of discrimination. Supervisors either participated in the misconduct or failed to take action to redress the unlawful conduct. Mr. Elmore heard the complaints of male coworkers who were repeatedly subjected to sexual demands by a female supervisor. He testified in at least one EEO case and was requested to testify in others about his observations. The workplace was filled with hostility. There was a loss of morale among subordinate employees; a war of discontent and disgruntlement between supervisors and a cover-up by higher management officials at the Miami District Office. The work environment had become chaotic. Supervisors expressed their

1 dislike for other supervisors and were allowed to freely and openly make negative statements about each  
2 other. Ms. Caddle was a central figure in the chaos that developed in the workplace. She used her knowledge  
3 that a fellow supervisor was involved in sexual relationships with subordinate employees as a weapon for  
4 revenge against the supervisor. She claimed another supervisor was incompetent and she refused to follow  
5 directions and remain at peace with her immediate supervisor. §§ 1.3 and 7.5. Coddle Dep at pp 29-35; 109-  
6 115.

7 6. Ms. Caddle managed to be hired as a supervisor when she complained she was a victim of  
8 discrimination. Caddle Dep at pp 9-20. As soon as she obtained the supervisory position, she began to misuse  
9 her authority. Ms. Caddle began to make unreasonable demands on supervisors and subordinate employees in  
10 the workplace. She demanded he terminate a romantic relationship with her daughter; she refused to grant Mr.  
11 Elmore's request to be reassigned to another unit when she knew her role as his supervisor was a conflict of  
12 interest. She falsely claimed Plaintiff's performance was poor, after she praised his performance in two prior  
13 appraisals, in order to block Mr. Elmore's request for telework as a reasonable accommodation. Ms. Caddle  
14 made no secret of her claim that Mr. Elmore's request for telework as a reasonable accommodation was an  
15 effort to "manipulate the system". Her opinion was obviously shared with Mr. Ferrell because he too claimed  
16 that Mr. Elmore's request for telework as a reasonable accommodation was an attempt to "game the system".  
17 See EX A, Ferrell Dep at pp 71-77 and Caddle Dep at pp 77.

18 7. Ms. Caddle, Mr. Ferrell and several other supervisors would later come under investigation  
19 by the Commission. The investigation revealed serious problems. Supervisors were either demoted, reassigned  
20 or terminated. Ferrell Dep at pp 81-88.

21 8. On June 1, 2015, Mr. Henry Elmore was hired as an Equal Opportunity (EO) Investigator  
22 (GS-7) by the Miami District Office (MIDO). From June 2015 to February 2017, Plaintiff reported to MIDO  
23 Enforcement Supervisor Fernella Peters, who rated Mr. Elmore as "outstanding" or "fully acceptable".  
24 Ferrell Dep at pp 17; 35-48; ROI at pp 11-14 and 216-245. Ms. Caddle claims Ms. Peters was an  
25 incompetent supervisor. Mr. Ferrell, who was also demoted and reassigned, contradicts Ms. Caddle's  
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1 assessment of Ms. Peters as an incompetent supervisor when she provided appraisals of Elmore. See Ferrell  
2 Dep at pp 10-29; 17-45 and 83-90.

3 9. From June, 2015 to February, 2017, Mr. Elmore worked alongside Ms. Rosemary Caddle as  
4 coworkers and peers. Caddle Dep at pp 21.

5 10. In late 2016, Ms. Rosemary Caddle filed an informal complaint, claiming she had improperly  
6 been denied the opportunity to compete for the position of MIDO Enforcement Supervisor. As a result of her  
7 complaint, Ms. Caddle was appointed to the supervisory position in January, 2017. Ms. Caddle claims her  
8 demotion was precipitated by retaliation after she escalated Mr. Hernandez's report that he was victim of quid  
9 pro quo sexual harassment by his supervisor. Caddle Dep at pp 39-51.

10 Caddle Dep at pp 10-13.

11 11. In March, 2017, Mr. Elmore was transferred to Ms. Caddle's unit. In 2020, Ms. Caddle was  
12 demoted from her position as supervisor and reassigned to the Charlotte District Office where she works via  
13 telework. Caddle Dep at pp 13-19; 29-33.

14 12. Sometime between late 2017 and 2018, Ms. Caddle became aware that Mr. Elmore was dating  
15 her daughter. Ms. Caddle was in a conflict of interest position because of her role as the mother of a woman  
16 who Plaintiff was dating.

17 13. Ms. Caddle became aware that Mr. Elmore would be testifying in EEO cases filed by Mr.  
18 Mario Hernandez and Ms. Heidy Elshater, who were subordinate employees, and members of Ms. Caddle's  
19 team. After Ms. Caddle learned that Mr. Elmore was prepared to press for a reasonable accommodation and  
20 would be a witness in EEO cases filed by Mr. Mario Hernandez and Ms. Heidy Elshater, she began to engage  
21 in retaliatory actions. She first began by claiming these employees, including Mr. Elmore, were "under-  
22 performers" and she wanted them out of her unit. Caddle Dep at pp 19-22; 73-79; *See Decl of Henry Elmore*.

23 14. On December 12, 2018, Plaintiff submitted a request to telework five (5) days per week as a  
24 reasonable accommodation due to his disability (Post Traumatic Stress Disorder "PTSD") to DPM Jackie  
25 Cumber. In his request, Plaintiff notes that "office distractions" affect his disability, preventing him from  
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1 focusing on the essential job functions and tasks of the job. On December 14, 2018, Plaintiff provided medical  
2 documentation from his physician for consideration by DPM Cumber. On December 20, 2018, DPM Cumber  
3 approved one (1) day per week of telework and a private office as an alternate reasonable accommodation. §§  
4 1.1, 1.2, 1.3 and 7.5. DPM Cumber never spoke with Plaintiff regarding any aspect of the disability, the  
5 triggers for any symptoms he suffered or what would serve as an effective reasonable accommodation. Ms.  
6 Cumber had only been hired in September, 2018, as a Human Resources Specialist/Disability Program  
7 Manager (DPM). Ms. Cumber was responsible for assessing and processing Reasonable Accommodation  
8 (RA) requests, processing requests for personal assistant, interpreter services, reader services, RA purchases,  
9 RA reporting, and RA training. Cumber Dep at pp 32-34; 57, 63, 70, 77 and § 7.2. The agency failed to  
10 engage in the interactive process when Ms. Cumber approved an accommodation, different from the  
11 accommodation requested, without speaking with the Plaintiff. EEOC Order 560.003 states: "The DPM and  
12 employee are required to communicate about the precise nature of the problem that is generating the request,  
13 how a disability is prompting a need for an accommodation, and alternative accommodations that may be  
14 effective in meeting an individual's needs." § 7.6.

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16 15. Apparently DPM Cumber felt it was important to converse, as part of the interactive process,  
17 with Ms. Caddle regarding Plaintiff's alleged performance deficiencies instead of speak with Mr. Elmore  
18 about his disability and need for telework as a reasonable accommodation. Ms. Caddle's conversations with  
19 Ms. Cumber included claims that Mr. Elmore was performing deficiently in his role as Investigator. Yet, none  
20 of the appraisals supported this idea. In fact, Ms. Caddle claims Mr. Elmore's prior supervisor improperly  
21 appraised his work as outstanding. Caddle Dep at pp 52-59. At page 59, Ms. Caddle makes the following  
22 assessment of an experienced supervisor: "Q. Do you think that she was incapable of accurately assessing my  
23 client's performance? A. I would say yes. Q. Okay. And you made that clear that you felt that she was not  
24 capable of properly assessing him, fair? A. Fair." Ms. Jackie Cumber confirms Ms. Caddle informed her  
25 about Plaintiff's alleged performance deficiencies but provided no support for the allegations regarding  
26 deficiencies. Neither she nor Ms. Caddle advised Plaintiff that the alleged performance deficiencies were  
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1 being discussed and would pose a problem for the reasonable accommodation. Most importantly, Ms.  
2 Cumber did not provide an official offer of an alternate reasonable accommodation to Mr. Elmore, as set forth  
3 in the agency policies. She simply followed what Ms. Caddle wanted. Cumber Dep at pp 26-36. Ms. Cumber  
4 also never participated in the interactive process. Cumber Dep at pp 32-34; 57, 63, 70, 77 and §§ 7.1, 7.2 and  
5 7.5.

6 16. Plaintiff worked a 4/10 compressed work schedule prior to his reasonable accommodation  
7 request. He was approved to telework one day per week under the CBA Telework Program. After receiving  
8 approval to telework one day per week as a reasonable accommodation, his management removed the one day  
9 of telework he was previously approved without the reasonable accommodation. Plaintiff was moved to  
10 another office but the noise and distractions continued to be an issue, because MIDO staff often entered his  
11 office without knocking on the door and that MIDO office staff engage in loud conversations near his office.  
12 §§ 1.1, 1.2 and 7.5; Ferrell Dep at pp 60-67.

13 17. On February 1, 2019, Plaintiff appealed the DPM's RA decision to CHCO Richardson. On  
14 February 8, 2019, Mr. Richardson upheld the DPM's determination to approve one (1) day of telework and a  
15 private office. Mr. Richardson also failed to engage in the interactive process when he issued his decision to  
16 deny the request for an effective reasonable accommodation on appeal. §§ 1.1, 1.2, 7.5 and 7.6. Mr.  
17 Richardson was aware Ms. Cumber had not spoken with Plaintiff and had very little information related to the  
18 nature of his disability, why the one day of telework and the private office was ineffective, Mr. Elmore's  
19 PTSD symptoms, the triggers for the symptoms and how telework would serve as an effective reasonable  
20 accommodation. Mr. Richardson was also aware Ms. Cumber had not followed procedure when she failed to  
21 offer Plaintiff an alternate accommodation. Mr. Richardson, without explanation, upheld the DPM's decision  
22 based on a known incomplete reasonable accommodation file. § 1.3. In early February 2019, DPM Cumber  
23 attempted to conduct a meeting between MIDO management and Plaintiff, after Plaintiff informed DPM  
24 Cumber she issued the determination without entering in the interactive process. Ms. Caddle refused to  
25 address Mr. Elmore's objection to the ineffective reasonable accommodation. Instead Ms. Caddle continued  
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1 to claim performance issues as an excuse for not providing an ineffective reasonable accommodation  
2 determination. *Id.* After Plaintiff raised objections to the denial of an ineffective reasonable accommodation,  
3 Mr. Ferrell and Ms. Caddle removed the telework he was approved under the Collective Bargaining  
4 Agreement (CBA) Telework Program in retaliation for requesting to telework five days per week as a  
5 reasonable accommodation and being granted telework one day per week as a reasonable accommodation. §§  
6 1.1 and 1.2 and EX B.

7 18. MIDO management did not follow CBA policy which required MIDO management to provide  
8 a written notification to the employee being removed from telework, including the reasons for the removal.  
9 Plaintiff never received such notice from MIDO when he was removed from telework. § 1.3.

10 19. As a matter of comparisons, Ms. Caddle supervised nine MIDO Investigators, including the  
11 Plaintiff. The name, race and gender of the MIDO Investigators in Ms. Caddle's Enforcement Unit are  
12 provided: Plaintiff: Black Male; Yolanda Ramirez: Black Hispanic Female; Melinda Moreno: White Hispanic  
13 Female; Mario Hernandez: White Hispanic Male; Elisa Keen: Black Hispanic Female; Maximilian Feige:  
14 White Male; Edgar Cole: Black Male; Heidy Elshater: White Hispanic Female; and Jeanette Wooten: White  
15 Female. ROI at pp 89-90; §§ 1.1, 1.2, 7.5 and 7.6. Plaintiff's coworker were allowed telework. Ms. Montero  
16 (actual name is Moreno), who was determined to be disabled (physical) was provided full time telework. EX  
17 B, Caddle Dep at pp 60-65; § 7.1.

18 20. A pattern of reprisal is present in this case. On May 8, 2019, MIDO management notified  
19 Plaintiff that his Within Grade Increase (WIGI) was denied, in retaliation for contacting the Office of Equal  
20 Opportunity and filing an EEO complaint. Ms. Caddle confirms she became aware of the EEO complaint filed  
21 by the Plaintiff when, on or about March 8, 2019, she was contacted by the EEO Counselor during the  
22 informal process. Ms. Caddle states that Plaintiff was eligible for a WIGI on May 26, 2019, but she initiated  
23 and recommended postponing Plaintiff's WIGI due to Plaintiff's continued undocumented performance  
24 deficiencies. Ms. Caddle's negative statements about Mr. Elmore's performance in contradicted by the  
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1 statements she wrote in every appraisal she provide prior thereto. Caddle Dep at pp 35-43; § 7.1.§ 1.4. See  
 2 *Decl of Henry Elmore*.

3 21. Ms. Caddle failed to provide Mr. Elmore with performance appraisals in 2019 and 2020. As a  
 4 result of Ms. Caddle's actions, Mr. Elmore has continued to be denied step increases and the ability to seek  
 5 employment in other federal agencies. See *Decl of Henry Elmore*.

6 **IV. FIRST CLAIM FOR RELIEF UNDER 42 U.S.C. § 2000 AND 42 U.S.C. §1981---**  
 7 **DENIAL OF WITHIN GRADE INCREASES AND UPWARD MOBILITY**

8 22. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

9 23. Mr. Elmore has a constitutionally protected property interest in federal employment and wage  
 10 increases. Plaintiff met all requirements to receive wage increases but he was denied every one he was entitled  
 11 to under federal law. The agency actions violated federal law. *Johnson v. United States*, 628 F.2d 187, 192,  
 12 194 (D.C. Cir. 1980); *Carey v. Phiphus*, 435 U.S. 247, 266, 98 S. Ct. 1042, 1053 (1978). Also see *Cleveland*  
 13 *Board of Educ. v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487 (1985) and *Ashton v. Civiletti*, 613 F.2d 923  
 14 (D.C. Cir. 1979).

15 24. Section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et.  
 16 seq. ("Section 717"), requires, in part, that "[a]ll personnel actions affecting employees or applicants for  
 17 employment [in the federal government] be made free from any discrimination based on race, color, religion,  
 18 sex, or national origin." Section 717 also obligates, in part, every department and agency to "maintain an  
 19 affirmative program of equal employment opportunity for all such employees." In carrying out the mandate of  
 20 Section 717, the Equal Employment Opportunity Commission promulgates regulations which require, inter  
 21 alia, that every federal department and agency implement, and submit to the EEOC, an "affirmative  
 22 employment plan" ("AEP"), which the EEOC reviews, evaluates, and approves. The AEP is intended to help  
 23 monitor and address efforts and accomplishments in the recruitment, hiring, training, promotion, separation  
 24 and other advancement opportunities in federal employment.

25 25. The EEOC issued compliance guidance in 1987 to all federal departments and agencies in an  
 26 Equal Employment Opportunity Management Directive entitled "MD-714." 4 EEOC's MD-714 obligates all  
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1 federal departments and agencies to create an “affirmative employment plan for minorities and women” which  
 2 is to identify alleged instances of “manifest imbalance” and “conspicuous absence” of women and racial  
 3 minorities, by gender and race, and establish “goals” and “target dates” in order to eliminate such alleged  
 4 “underrepresentation” at all organizational levels.

5 26. The EEOC’s MD-714 makes department and agency heads accountable for the successful  
 6 implementation of the AEP, and requires them in turn to review, evaluate, and hold accountable all  
 7 subordinate officials, managers, and employees.

8 27. In accordance with MD-714’s requirements, EEOC has failed to establish certain racial goals  
 9 in employment, coupled with deadlines and target dates. EEOC was required to review and evaluate managers  
 10 and supervisors, and provides performance appraisals and incentives, based on achieving these goals.  
 11 Managers who fail to perform may receive lower evaluation ratings, a reduced or eliminated bonus, may be  
 12 reassigned or lose a grade, and ultimately may be terminated.

13 28. EEOC has failed to fulfill its duties to provide wage increases to Plaintiff over the course  
 14 three years; even after Plaintiff requested reconsideration, the EEOC has failed to provide wage increases all  
 15 while EEOC heads failed to review and evaluate managers and supervisors, and provide performance  
 16 appraisals and incentives, based on achieving these goals. Managers who failed to perform have not received  
 17 lower evaluation ratings, now did they suffer reduced or eliminated bonus, or reassigned or lose a grade, and  
 18 were not terminated.

19  
 20 **V. SECOND CAUSE OF ACTION UNDER 29 U.S.C. §§ 701 TO 796 AND 42 U.S.C §§12101 TO 12213---**  
 21 **DENIAL OF AN INTERACTIVE PROCESS,**  
**REASONABLE ACCOMMODATION AND RECONSIDERATION**

22 29. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

23 30. The Rehabilitation Act of 1973, 29 U.S.C. §§ 701 to 796, protects against employment  
 24 discrimination on the basis of a disability by an employer that constitutes a program or activity receiving  
 25 federal financial assistance. The Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 to 12213, also  
 26 protects against employment discrimination on the basis of a disability.  
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1           31.     *The Agency failed to engage Plaintiff in the interactive process;*

2           32.     Ms. Cumber failed to conduct an interactive process when she knew Plaintiff's mental  
3 condition was central to his need for telework. Ms. Cumber knew other employees were allowed to utilize  
4 telework as a provision in the CBA. Ms. Cumber repeated her denial of an interactive process when Mr.  
5 Elmore filed for reconsideration of the denial of telework.

6           33.     There was no prior indication that Mr. Elmore had ever used or abused telework. In fact, he  
7 rarely used the one day a week of telework which had been granted to all investigators through the CBA. Mr.  
8 Elmore hoped to explain this to Ms. Cumber in the interactive process, but it never happened. Ms. Cumber  
9 never spoke with Mr. Elmore; nor did she provide him an opportunity to understand any reservations she or  
10 Caddle had concerning his request for telework. The introductory letter sent to Mr. Elmore was not even a  
11 semblance of an interactive process. Ms. Cumber chose to only speak with Ms. Caddle and Mr. Ferrell and  
12 she ignored agency policy and federal law and hundreds of periodicals which inform her regarding what an  
13 interactive process is. At minimum, Ms. Cumber should have spoken with Mr. Elmore so she could  
14 understand how his impairment impacted his ability to perform on the job. The interactive process is intended  
15 to allow the employee and the agency to work, back and forth together, to jointly make a determination as to  
16 what accommodation would be effective.

17           34.     Ms. Cumber also never allowed Mr. Elmore to explain how his disability impacted his daily  
18 life on the job. She never allowed him to convey what the stressors were which precipitated his need for  
19 telework. She only spoke with Mr. Ferrell and Ms. Caddle regarding a disability which only impacted Mr.  
20 Elmore and only he understood and had to live with on a daily basis.

21           35.     *The Agency denied Plaintiff an effective accommodation*

22           36.     Assuming arguendo that Mr. Elmore's performance was deficient, it was illogical to deny a  
23 reasonable accommodation to an employee whose disability could be accommodated in order to correct the  
24 performance deficiencies. It would be like denying an employee who suffers with poor eyesight as a disability  
25 a larger computer monitor to enable him to overcome performance deficiencies caused by poor eyesight. Ms.  
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1 Cumber never questioned Mr. Elmore about performance allegations; she never required Ms. Caddle to  
2 provide performance appraisals to support her bare allegations. The 2017-2019 appraisals belied Ms. Caddle's  
3 assertions that Plaintiff's performance was deficient. The assertion was nothing more than pretext. Cumber  
4 never bothered to ask Mr. Elmore how the reasonable accommodation would serve to address his disability.  
5 Instead, Mr. Elmore was relegated to an office on the 16<sup>th</sup> floor across from the employee lounge, where loud  
6 noises and boisterous laughter was commonplace.

7       37. The agency had an obligation to provide an effective accommodation. Telework was provided  
8 to most employees and full-time telework to at least one employee who was disabled. See Caddle Dep at pp 60-  
9 67. The accommodation did not cause undue hardship to the agency when Ms. Montero was granted full-time  
10 telework. As illustrated by the *Enforcement Guidance: Reasonable Accommodation*, at pp. 46-47, the  
11 appropriateness of working at home as an accommodation will often depend on the nature of the employee's  
12 job. In this case, telework was allowed to others, some of whom had no documented disability. An employer  
13 must modify its policy concerning where work is performed if such a change is needed as a reasonable  
14 accommodation, but only if this accommodation would be effective and would not cause an undue hardship.  
15 Whether this accommodation is effective will depend on whether the essential functions of the position can be  
16 performed at home. There are certain jobs in which the essential functions can only be performed at the work  
17 site—e.g., food server, cashier in a store. For such jobs, allowing an employee to work at home is not effective  
18 because it does not enable an employee to perform his/her essential functions. In contrast, employees may be  
19 able to perform the essential functions of certain types of jobs at home (e.g., telemarketer, proofreader, lesson  
20 planner). For these types of jobs, an employer may deny a request to work at home if it can show that another  
21 accommodation would be effective or if working at home will cause undue hardship. See *Hupka v. Secretary of*  
22 *Defense, supra.*; *Langdon v. Secretary of Health and Human Services*, 959 F.2d 1053, 1060 (D.C. Cir. 1992)  
23 (remanding for consideration of whether employee's disability could be accommodated by working at home).  
24 The ADA does not require employers to have a telework program, but if one exists it must allow individuals  
25 with disabilities to participate to the same extent as other employees. Moreover, if an employer does have such  
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1 a program, allowing an individual with a disability to participate in the program can constitute reasonable  
2 accommodation. *Id.*

3 38. Ms. Caddle's claims that the accommodation would create an undue burden was nonsense. A  
4 careful reading of her deposition testimony reveals the agency's reason for its treatment of Plaintiff is  
5 pretextual. Ms. Caddle's conversations with Ms. Cumber included claims that Mr. Elmore was performing  
6 deficiently in his role as Investigator. Yet, none of the appraisals supported this idea. In fact, Ms. Caddle claims  
7 Mr. Elmore's prior supervisor improperly appraised his work as outstanding. Caddle Dep at pp 52-59. At page  
8 59, Ms. Caddle makes the following assessment of an experienced supervisor: "Q. Do you think that she was  
9 incapable of accurately assessing my client's performance? A. I would say yes. Q. Okay. And you made that  
10 clear that you felt that she was not capable of properly assessing him, fair? A. Fair." Ms. Jackie Cumber  
11 confirms Ms. Caddle informed her about Plaintiff's alleged performance deficiencies but provided no support  
12 for the allegations regarding deficiencies. Neither she nor Ms. Caddle advised Plaintiff that the alleged  
13 performance deficiencies were being discussed and would pose a problem for the reasonable accommodation.  
14 Most importantly, Ms. Cumber did not offer an alternate reasonable accommodation as set forth in the agency  
15 policies. She simply followed what Caddle wanted. Cumber Dep at pp 26-36. Ms. Cumber also never  
16 participated in the interactive process. Cumber Dep at pp 32-34; 57, 63, 70, 77 and § 7.2.

17 39. The agency bears the burden of proof to show that the accommodation would impose an undue  
18 burden. The agency must provide specific evidence the accommodation would create an undue hardship. In this  
19 case, all we have is a statement from Caddle. This is not proof. As previously indicated there is no proof that  
20 Plaintiff's work performance was deficient. See 2017, 2018 and 2019 appraisals. Moreover, there is no  
21 evidence that the requested telework was not appropriate. The agency has not provided any detailed data to  
22 support its contention that such an accommodation would be an undue hardship, but, through Ms. Caddle and  
23 Mr. Ferrell, has made only general conclusory statements about performance. Considering the overall size of  
24 the agency, which during the period at issue was substantial, with a nationwide and world-wide presence; the  
25 fact that a profoundly disabled employee in the agency's Miami District Office was provided telework; and the  
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1 intent of Congress that the Federal government undertake measures to reasonably accommodate that would  
2 involve more than a *de minimis* cost; the cost of providing the telework reveals that something else was going  
3 on here. The agency has failed to offer a justifiable reason for why this did not occur. The only alternate  
4 accommodation provided to Mr. Elmore was an office on the 16<sup>th</sup> floor, which was not effective in that it was  
5 across the hall from the employee lounge, where loud, boisterous conversations were commonplace. Nor did  
6 she communicate to him that his supervisor was alleging that he failing to perform adequately on the job; she  
7 did not allow Plaintiff to convey that his performance only became an issue after he agreed to testify in EEO  
8 cases filed by coworkers; his performance was impacted negatively by the various forms of harassment by  
9 supervisors, including a supervisors sexual relations with two subordinate male employees, the investigations of  
10 those supervisors by management, the poor leadership, the reassignment of supervisors, Ms. Caddle insistence  
11 on visiting Plaintiff at his home following an motor vehicle accident, the pressure of Ms. Caddle to “properly  
12 treat her daughter” who made repeated requests for money and the denial of his request for reasonable  
13 accommodation to escape the chaos and focus on his work.

14  
15 40. *The Agency denied Plaintiff's request for reconsideration and appeal without engaging in the interactive process with Plaintiff.*

16 41. The agency was provided an opportunity to correct its earlier missteps when it failed to  
17 conduct an interactive process and provide an effective reasonable accommodation when Mr. Elmore filed a  
18 request for reconsideration. However, by this time, the agency was actively involved in disability and  
19 retaliatory harassment. The analysis for hostile environment cases based on disability is set forth in *Fetters v.*  
20 *Postmaster General*, 0120131553 (2013). It is well-settled that harassment based on an individual's disability  
21 is actionable. *See Meritor Savings Bank FSB v. Vinson*, 477 U.S. 57 (1986). In order to establish a claim of  
22 harassment under those bases, the Plaintiff must show that: (1) he is a qualified individual with a disability  
23 covered under the Rehabilitation Act; (2) he was subjected to unwelcome conduct; (3) the harassment  
24 complained of was based on his disability; (4) the harassment had the purpose or effect of unreasonably  
25 interfering with his work performance and/or creating an intimidating, hostile, or offensive work environment;  
26 and (5) there is a basis for imputing liability to the employer. *See Flowers v. Southern Reg'l Physician Serv.*

1 *Inc.*, 247 F.3d 229 (5th Cir. 2001); *see also Fox v. General Motors Corp.*, 247 F.3d 169 (4th Cir. 2001). The  
 2 harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's  
 3 circumstances. Enforcement Guidance on *Harris v. Forklift Systems Inc.*, EEOC Notice No. 915.002 (March  
 4 8, 1994).

5 42. The denial of the interactive process and an effective accommodation was repeated on  
 6 reconsideration. These repeated denials of an interactive process and an effective reasonable accommodation  
 7 was a form of disability and retaliatory harassment. It was blatant, bold, severe and pervasive. It created a work  
 8 environment abusive to Mr. Elmore. When a workplace is permeated with discriminatory intimidation of person  
 9 who the agency knew was mentally impaired.

10 **VI. THIRD CLAIM FOR RELIEF UNDER TITLE VII, 42 U.S.C. § 2000 AND 42 U.S.C. §1981---**  
 11 **DISPARATE TREATMENT, REPRISAL AND DUE PROCESS VIOLATIONS UNDER**  
 12 **CONSTITUTIONAL PROVISIONS**

13 *Plaintiff has been subjected to disparate treatment on the basis of reprisal (requesting a reasonable*  
 14 *accommodation), when, on or about February 14, 2019: Issue 1: After participating in a*  
 15 *teleconference on February 14, 2019, regarding Plaintiff's reasonable accommodation request,*  
 16 *Plaintiff was notified of approval of one day of telework as a reasonable accommodation while*  
 17 *simultaneously removing the single day of telework he already had without reasonable*  
 18 *accommodation.*

19 43. Plaintiff incorporates by reference paragraphs 1 through 43 above

20 44. The denial of a reasonable accommodation can be viewed as retaliatory harassment. In  
 21 recognizing such a claim in *Antol v. Secretary of Defense, DLA*, 01952879 (1996), the Commission explained:

22 The Commission has consistently held that Title VII affords all employees the right to work in an  
 23 environment free from retaliatory intimidation. *See Charbonneau v. United States Postal Service*,  
 24 EEOC Request No. 05930504 (August 5, 1993). The Commission has found that retaliatory  
 25 harassment intended to deter an employee from filing or pursuing EEO complaints constitutes  
 26 such a threat to the EEO process that, even when the Plaintiff is a former employee, "such  
 27 allegations state a claim within the Commission's regulations because of the potential that  
 retaliatory harassment may constrain other employees who desire to pursue EEO remedies." *See*  
*id.*; *Quinones v. Department of the Interior*, EEOC Request No. 05920869 (May 14, 1993).  
 Appellant's complaint alleges that his Commander intimidated him in an effort to deter him from  
 using the EEO process by discussing his EEO complaints when appellant's attorney was not  
 present and by making clear that appellant should not file any more EEO complaints. Appellant  
 further alleges that this was done because of appellant's sex and disability and in reprisal for  
 appellant's prior EEO complaints.

1           44. Plaintiff engaged in protected opposition to Title VII discrimination or participated in a Title  
 2 VII proceeding (e.g., filing a discrimination charge); (2) the agency was aware of the EEO activity; (3) the  
 3 agency treated the employee adversely contemporaneous with or subsequent to her EEO activity; and, (4) there  
 4 is a causal connection between the protected activity and the adverse treatment. *See, e.g., Whitmire v.*  
 5 *Department of the Air Force*, EEOC Appeal No. 01A00340 (September 25, 2000); *Wrighten v. Metropolitan*  
 6 *Hospitals, Inc.*, 726 F.2d 1346, 1354 (9th Cir. 1984).

7           45. Retaliatory harassment does not have to be severe or pervasive to be actionable. *See, e.g.,*  
 8 *Douglas v. U.S. Postal Service*, EEOC Appeal No. 0120090284 (April 10, 2009); *Burlington Northern and*  
 9 *Santa Fe Railway Company v. White*, 548 U.S. 53 (2006) (finding that the anti-retaliation provision protects  
 10 individuals from a retaliatory action that a reasonable person would have found “materially adverse,” which in  
 11 the retaliation context means that the action might have deterred a reasonable person from opposing  
 12 discrimination or participating in the EEOC charge process); *see also Lindsey v. U.S. Postal Service*, EEOC  
 13 Request No. 05980410 (November 4, 1999). The statutory retaliation clauses prohibit any adverse treatment  
 14 that is based upon a retaliatory motive and is reasonably likely to deter the charging party or others from  
 15 engaging in protected activity. *Id.*

16  
 17           46. The EEOC Enforcement Guidance at 3 provides insight to determine whether a work  
 18 environment is objectively hostile or abusive, the trier of fact must consider all of the circumstances, including  
 19 the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or  
 20 a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.  
 21 *Harris*, [510 U.S. at 23; 114 S. Ct.] at 371; EEOC Enforcement Guidance at 4, 5. While the trier of fact should  
 22 consider all relevant factors, no single factor is required to establish a hostile or abusive work environment  
 23 claim. *Harris*, [510 U.S. at 23; 114 S. Ct. at 371]; EEOC Enforcement Guidance at 6. The Commission has  
 24 indicated its belief that the *Harris* decision applies to cases involving hostile or abusive environment  
 25 harassment claims on the basis of age or disability as well as to hostile or abusive environment harassment on  
 26 the basis of race, gender, religion, or national origin.  
 27

1           47. Ms. Caddle allowed other employees to utilize telework freely. After participating in a  
2 teleconference on February 14, 2019, regarding Plaintiff's reasonable accommodation request, Plaintiff was  
3 notified of approval of one day of telework as a reasonable accommodation while simultaneously removing the  
4 single day of telework he already had without reasonable accommodation. In the case of Ms. Montero, she was  
5 allowed to telework everyday she worked. At pp 60: "Now, were there any other employees that you supervised  
6 who were receiving telework? A. Yes." See Caddle Dep at pp 60-67.

7           48. Ms. Caddle also denied two days of telework to Mr. Elmore and the office he was assigned  
8 was noisy and failed to serve as an effective reasonable accommodation. See Caddle Dep at pp 67-69. See  
9 also testimony of Ms. Cumber at pp 25-40. *See Decl of Henry Elmore.*

10           49. Ms. Caddle had a history of retaliation. She claimed Mr. Elmore, Mr. Hernandez and Ms.  
11 Elshater were manipulating the system only after they participated in protected activity. See Caddle Dep at pp  
12 70-74. Each employee had engaged in prior protected activity before they became victims of claims by Caddle  
13 that they were manipulating the system. At pp 77: "A. No. What was going on is that; again, I had three under-  
14 performers that were manipulating the system and I had a job to do." At page 78: "Q. Was Mr. Hernandez and  
15 Mr. Elmore and the other lady, Elshater -- I'm sorry about the pronunciation -- if they weren't working because  
16 of manipulating the system, weren't you really engaged in harassing conduct when you described them as  
17 manipulating the system? MR. VARMA: Objection. A. If that's how you interpret it, let it be. But that's not how  
18 -- that's not -- there was no harassment if you're wanting to get your employees to work. They need to just do  
19 what they're getting paid to do, and that's nothing -- they should not want to go to work to lay on the phone,  
20 listen to movies on their computers, putting their feet up on their desk and do everything other than opening  
21 their case files, reviewing it, analyzing it and just doing the work." See Caddle Dep at pp 93-97.

22           50. When Mr. Elmore contacted Mr. Ferrell to discuss his disability and need for telework as a  
23 reasonable accommodation, Mr. Ferrell accused Plaintiff of trying to "game the system." First, Mr. Ferrell  
24 claims he did not say it. When he is reminded that the EEOC investigator reported it, he basically calls the  
25 investigator a liar. See Ferrell Dep at pp 71-75 and EX A.  
26  
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1           51.     Ms. Caddle's retaliatory conduct was reflected in how she treated AT&T after her daughter  
2 was terminated by the company and later came before Ms. Caddle. See Caddle Dep at pp 79-84. Ms. Caddle  
3 was in conflict of interest position when she served as Plaintiff's supervisor while he dated her daughter. "Q.  
4 So you were led to believe at the time that Mr. Elmore -- well, you testified here in your statement, you said  
5 that, "One day I saw complaint had my daughter's phone number written on a paper, just the number." A. Uh-  
6 huh. Q. Then you questioned him about why he had the phone number of your daughter. A. Right. And he  
7 said, "That's my future wife." Q. He said this was his future wife -- A. And I told him that he better cut it out,  
8 because he was always joking. So he has this joking thing and I told him don't play with that. And I also told  
9 him that if ever he became -- if they ever did date or started going out, that he needed to tell me because he  
10 wouldn't be able to be in my unit. Q. Why not? A. Because it would be a conflict of interest. Q. Well, do you  
11 have any written documentation to corroborate that you told him that? A. No, just like he doesn't have any  
12 written documentation that I didn't. But I'm not a person that goes around lying, so I have integrity. And just a  
13 lot of the things that you're mentioning that he told you are lies. So, you know, it also comes down to who do  
14 you want to believe. But I have no reason to lie. I have no bone in this -- no dog in this fight. Q. Okay. Now,  
15 you agree you don't say anything like that in your affidavit that you had told him that if they were dating that  
16 you would recuse yourself or you would reassign him so there was no conflict, right? A. And that's -- and I  
17 should have written it in there. But if you asked him if I told him that, he would not be able to truthfully say  
18 that that conversation did not happen. But I have been with the government for 35 plus years, never a write-  
19 up, never anything. I hold my integrity above everything. I risked by job by coming forth with something that  
20 was brought to my attention, although I knew I was going to have -- you know, there may be backlash. I'm  
21 going to tell the truth and be as honest as I possibly can in every situation. So I consider myself a person of  
22 integrity and that I'm going to do my job whether it's the hard -- you know, whether it's hard or easy, I'm going  
23 to do it. I'm going to make those tough calls that some others look the other way on."

25           52.     Ms. Caddle was aware Mr. Elmore was in an intimate relationship with her daughter and used  
26 her authority to lord over Mr. Elmore at every turn that counted. At page 100 of her deposition she testifies:  
27

1 “Were you aware that they were in a romantic, intimate relationship? MR. VARMA: Objection; asked and  
2 answered. A. No. Q. Were you aware that your daughter was requesting money frequently from Mr. Elmore?  
3 A. No. Q. You didn't know that at all; is that correct? MR. VARMA: Objection; asked and answered. A.  
4 Correct. Q. Have you ever been to Mr. Elmore's apartment? A. I have. Q. Can you tell me under what  
5 circumstances that occurred? A. When he was released from the hospital following his accident. Q. Was your  
6 daughter there too? A. No, it was a coworker. One of his coworkers and I and his sister was there and I  
7 brought food for – I brought lunch for him and his sister who was caring for him from out of town. Q. Were  
8 you aware that your daughter had spent the night with Mr. Elmore on multiple occasions? MR. VARMA:  
9 Objection. A. No.” Mr. Elmore requested a reassignment but it was denied. Ms. Caddle must have learned of  
10 the request so she used her authority to degrade Mr. Elmore in meetings and eventually pushed for his  
11 reassignment to another unit. Caddle Dep at pp 102-115.

12 53. Mr. Elmore reported he was a victim of retaliation to Mr. Ferrell, his second line supervisor.  
13 At page 91 of his deposition, Ferrell testifies as follows: “A. Well, one of the meetings was about this one day  
14 of telework where he felt he was being retaliated against for asking for an accommodation, so it would have  
15 been right after that, right after Jackie Cumber's decision. One of them was after the stand-down meeting and I  
16 honestly don't remember the date. It would have been a third quarter, probably FY '18, the 3rd quarter. Q.  
17 Okay. Sometime in the 3rd quarter of 2018; is that correct? A. I would think so, FY '18 or FY '19. I would  
18 think FY '18 -- no, it may have been FY '19. Because he went out in September of '19 so it may have been FY  
19 '19. Q. Okay. A. But I did stand-down in the third quarter. Q. Now, I just want to make sure. Do you recall,  
20 sir, what the nature of the first meeting was that you mentioned? A. Yes. Q. Okay. And did it relate to his  
21 disability, sir? A. It related to his wanting another day of telework. Q. Okay. Thank you. A. On top of his  
22 accommodation. Q. Okay, sir. And so that -- you believe that the -- each of the three meetings occurred in  
23 2019; is that correct? A. I can't -- it would be '18 or '19. It would be '18 or '19. Q. Thank you, sir... Q. And  
24 those meetings took place in your office, correct? A. Correct.”  
25  
26  
27



1           54.     The evidence establishes supervisors participated in the harassment, either tacitly by failing to  
2 address his reports of harassment, or in the case of Ferrell and Caddle, directly. There is also evidence that  
3 Ferrell failed to ensure an interactive process was conducted. Mr. Ferrell was accusing Mr. Elmore of  
4 “gaming” the system. Ferrell Dep at pp 71-75. Colleagues became aware of how supervisors were engaged in  
5 either sexual harassment of subordinate employees, fighting between supervisors, harassment of employees  
6 and more. This led to demotions, reassignments and discipline of supervisors. Ferrell Dep at pp 80-87. Ms.  
7 Caddle demonized Plaintiff by suggesting he was incompetent, manipulating the system in his quest for a  
8 reasonable accommodation from 2018 to the day she was demoted and reassigned. Ferrell Dep at pp 31-34;  
9 85-88. This ragged environment caused Elmore’s mental stressors, which brought on the need for the request  
10 for a reasonable accommodation, but it also caused a deterioration of his medical and psychological condition  
11 over time.

12           54.     Mr. Elmore’s reconsideration efforts, his willingness to testify in the EEO cases of coworkers  
13 and the filing of the current EEO case only brought on reprisal. These efforts served as the predicate for  
14 reprisal. When Plaintiff filed the request for reconsideration, it intensified management’s anger. When  
15 Plaintiff brought an EEO case, it took them over the top. It created a dysfunctional mentality in Caddle and  
16 Ferrell. This is when they began to claim Elmore was either trying to “game” or “manipulate” the system. EX  
17 A.

18           55.     One of Plaintiff’s claims relates to whether he was subjected to reprisal (because of the  
19 filing of the instant complaint) when, on May 8, 2019, the Miami District Office management notified  
20 Plaintiff that his Within Grade Increase was denied. This claim is no longer before the Commission and  
21 is now before the Merit Systems Protection Board. However, there is nothing to preclude Mr. Elmore  
22 from pointing to the agency’s actions concerning this claim as pattern evidence of reprisal. It was a  
23 violation of law for the Commission to discriminate against Mr. Elmore on the basis of his disability in regard  
24 to any of the following: (1) recruitment, advertising, and job application procedures; (2) hiring, upgrading,  
25 promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring; (3)  
26  
27

1 rates of pay or any other form of compensation and changes in compensation; (4) job assignments, job  
2 classifications, organizational structures, position descriptions, lines of progression, and seniority lists; (5)  
3 leaves of absence, sick leave, or any other leave; (6) fringe benefits available by virtue of employment, whether  
4 or not administered by the covered entity; (7) selection and financial support for training, including:  
5 apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of  
6 absence to pursue training; and (8) activities sponsored by a covered entity, including social and recreational  
7 programs; and any other term, condition, or privilege of employment, including, but not limited to acts  
8 described in 29 C.F.R. §§ 1630.4 to 1630.13.

9         56. The evidence demonstrates a pattern of retaliation and disability discrimination. First, Caddle  
10 callously disregarded Mr. Elmore's need for telework as a reasonable accommodation and falsely claimed,  
11 without evidence, he should not be given telework because of his poor performance; next she and Ferrell made  
12 allegations, without evidence, that Plaintiff was "gaming" and "manipulating" the system simply because he  
13 made a request for reasonable accommodation; next they sought to remove him from the unit to which he was  
14 assigned because of a bogus claim he was under-performing, while they refused to provide him with  
15 performance appraisals in 2019 and 2020; in the end they denied his Step increase and the one day of telework  
16 which every other employee enjoyed. This is pattern evidence of retaliation. See *Buckner v. Secretary of*  
17 *Treasury*, 0120103052 (2011).

18         57. Senior management officials should have stepped in before the damage had been done; they  
19 should have stepped in and investigated the work environment and determined that supervisors should be  
20 demoted, reassigned and disciplined before employees had been severely harmed. The work environment was  
21 deplorable and senior management knew it. Plaintiff and other subordinate employees were victims of an out-  
22 of-control group of supervisors who engaged in discrimination, sexual harassment and violations of policy and  
23 law. It was plain for everyone to see. This is why so many supervisors were eventually relieved of their  
24 positions. The only problem is that senior management acted too late. They waited and allowed Mr. Elmore and  
25 other subordinate employees to fall victim of discrimination for months and months. It was shameful that no  
26  
27

1 one stopped the chaos long before. Ferrell, Caddle and other supervisors went undisciplined for months while  
2 Elmore and many other employees were pleading for help. The application and analysis of Commission policies  
3 and the law did not require Commission employees to conduct a detailed deconstruction of Constitutional case  
4 law or an exhaustive examination of pertinent regulations to understand what their obligations were in this case.  
5 If Commission officials had simply followed Commission law and policies, the considerable harm they allowed  
6 and the resources expended in this ordeal could have been avoided. Even now, Commission employees are  
7 attempting to cover-up what occurred and are now blaming Elmore for violations of law which Commission  
8 supervisors committed.

9 58. *Plaintiff has been subjected to due process violations in how the administrative judge was*  
10 *selected, the biased selection, the actions taken by the biased selectee and the retaliation he was subjected*  
11 *after he raised concerns about the selection.*

12 59. Plaintiff incorporates by reference paragraphs 1 through 59 above.

13 60. Defendants have intentionally discriminated against Plaintiff on the basis of his race, disability  
14 and gender, and will continue to discriminate if not enjoined.

15 61. Defendants' actions, policies and practices violate the Due Process Clause of the Fifth  
16 Amendment of the Constitution.

17 62. Plaintiff will suffer additional irreparable harm if Defendants' scheme of how it selects contract  
18 administrative judges to serve in cases in which the EEOC is a party.

19 63. On December 9, 2020, Plaintiff filed a Motion for Recusal of the agency's selected contract  
20 administrative judge and copied the agency's legal counsel. Evidence suggested agency attorneys had repeated  
21 ex parte communications with the contract administrative judge. The administrative judge and agency attorneys  
22 refused to provide information as to how the contract administrative judge was selected by the EEOC and the  
23 conflict of interest which was created by that process.

24 64. The Motion for Recusal cited to Martin H. Redish & Lawrence C. Marshall, *Adjudicatory*  
25 *Independence and the Values of Procedural Due Process*, 95 YALE L.J. 455, 475 (1986) ("The Supreme Court  
26 has often stated that the core rights of due process are notice and hearing.") See U.S. CONST. Amend. V  
27

(providing that no person shall be "deprived of life, liberty, or property, without due process of law"); *id.* Amend. XIV (providing that no state shall "deprive any person of life, liberty, or property, without due process of law"). The right to be tried by an impartial judge is deeply embedded in American jurisprudence; in fact, this right has often been considered to be the cornerstone of the American legal system. Congress has authorized parties to seek disqualification on the basis of an appearance of judicial bias or impropriety. For example, the primary federal judicial statute, Title 28 U.S.C. § 455, contains a provision (§ 455 a) that calls for a federal judge to be disqualified not only when she is biased against a party, but whenever a reasonable, disinterested observed would think she might be. See *In re Murchison*, 349 U.S. 133, 99 L. Ed. 942, 55 S. Ct. 623 (1955). *Ward v. Village of Monroeville*, 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed. 2d 267 (1972). *Sierra Forest Legacy v. Rey*, 526 F.3d 1228, (9th Cir. 2008); (citing *Gibson v. Berryhill*, 411 U.S. 564, 579, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973). *Swift v Island County*, 87 Wn.2d 348, 361, 552 P.2d 175 (1976). *Caperton v Massey Coal Co. Inc. ET, al.*, 556 U.S. \_\_\_\_ (2009). In an opinion written by Justice Kennedy, the Court concluded that: *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 821-22 (1986). And "[t]rial before an 'unbiased judge' is essential to due process." *Johnson v. Mississippi*, 403 U.S. 212, 216 (1971); *accord Concrete Pipe & Prods. V.Constr. Laborers Pension Trust*, 508 U.S. 602, 617 (1993) ("due process requires a 'neutral and detached judge in the first instance'" (citation omitted). Moreover, "justice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14 (1954). At any stage in the process, an EEO Plaintiff is entitled to the representative of his or her choosing and "the Plaintiff shall have the right to be accompanied, represented, and advised" by that representative. 29 CFR 1614.605(a). It is not necessary that either party's representative be an attorney. The use of layperson representatives is permitted in the EEO process and is common on the part of both the employees and agencies. See 5 U.S.C. § 555(b) (1966).

65. Plaintiff requested the administrative judge relinquish her involvement in adjudicating Plaintiff's case. She has a personal stake in the matter, which means she has a personal conflict of interest. A new contract administrative judge should be appointed to adjudicate the issues. See *Wright v. EEOC*, 01A32917 (2004). The administrative judge became angry by the Motion for Recusal and became involved in reprisal.

**VII. REQUEST FOR RELIEF**

66. Plaintiff incorporates by reference paragraphs 1 through 64 above.

67. WHEREFORE, Plaintiff respectfully request that this Court enter a judgment for Plaintiff and award the following relief:

(a) A permanent injunction prohibiting Defendants Stan Pietrusiak and the United States Equal Employment Opportunity Commission employees, agents, officers, representatives and servants from using the current system for hiring contract administrative judges;

(b) A permanent injunction against Defendants and their employees, agents, officers, representatives and servants from discriminating on the basis of race, disability and gender in violation of Title VII;

(c) A permanent injunction against Defendants and their employees, agents, officers, representatives and servants from discriminating on the basis of race, disability and gender in violation of Plaintiff's constitutional and statutory rights;

(d) A declaratory judgment that Defendants, as heads of their respective departments, violated Plaintiff's rights to Equal Protection under the Fifth Amendment;

(e) A permanent injunction against Defendants, as head of EEOC, and his employees, agents, officers, representatives and servants from encouraging and inducing other departments and agencies to engage in illegal race and gender discrimination, and sanctioning and approving such illegal discrimination;

(f) An award to Plaintiff of attorneys' fees and for costs of suit;

(g) An award of compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;

(i) An award of economic losses, including loss of wages, on the claim allowed by law;

(j) An award of special damages in an amount to be determined at trial;

1 (k) An award of punitive damages on all claims allowed by law against individual Defendants  
2 and in an amount to be determined at trial;

3 (l) An award of wage increases dating back to 2019;

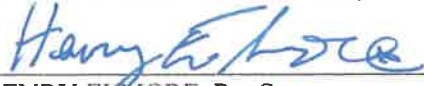
4 (m) An award of pre- and post-judgment interest at the lawful rate; and,

5 (n) An award of any further relief that this court deems just and proper, and any other appropriate  
6 relief at law and equity.

7 **VIII. PLAINTIFF REQUESTS A TRIAL BY JURY.**

8 August 27, 2021  
9

10 RESPECTFULLY SUBMITTED,

11 

12 HENRY ELMORE, Pro Se  
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1240 Winnowing Way  
Suite 102  
Mount Pleasant, South Carolina 29466  
Telephone: 843 303-9532  
Facsimile: 877 211-7549  
Email: Brad@bmarshall.me  
Website: Chartmans.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent via U.S. Mail to:

United District Court  
District of Columbia  
Clerk of the Court  
Room 1225  
333 Constitution Avenue N.W.  
Washington D.C. 20001

August 29, 2021

Respectfully Submitted  
**CHARTMANS INC**

By:

\_\_\_\_\_  
s  
**BRADLEY R. MARSHALL**  
Designated Representative  
1240 Winnowing Way  
Suite 102  
Mount Pleasant, South Carolina 29466  
Telephone: 843 303-9532  
Facsimile: 877 211-7549  
Email: Brad@bmarshall.me  
Website: Chartmans.com

# CHARTMANS INC.

Charting a New Course for Global Representation

August 29, 2021

United District Court  
District of Columbia  
Clerk of the Court  
Room 1225  
333 Constitution Avenue N.W.  
Washington D.C. 20001

RE: Request for filing of Complaint

Dear Clerk of the Court:

Enclosed, please find a pro se formal complaint, a check in the amount of \$402.00 and a return self-addressed (stamped) envelope. Request is hereby made for the filing of the complaint. A copy of the filed complaint and receipt should be sent to:

Bradley R. Marshall  
1240 Winnowing Way,  
Suite 102  
Mount Pleasant, SC 29466

Thank you kindly for your cooperation and courtesy.

Respectfully Submitted  
**CHARTMANS INC**

By:

s  
BRADLEY R. MARSHALL  
Designated Representative  
1240 Winnowing Way  
Suite 102  
Mount Pleasant, South Carolina 29466  
Telephone: 843 303-9532  
Facsimile: 877 211-7549  
Email: Brad@bmarshall.me  
Website: Chartmans.com



